

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK

MAY -3 2007

COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Respondent,)	2 CA-CR 2007-0016-PR
)	DEPARTMENT A
v.)	
)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
BENJAMIN JOHNSON REITER,)	Rule 111, Rules of
)	the Supreme Court
Petitioner.)	
)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-20052965

Honorable Christopher C. Browning, Judge

REVIEW GRANTED; RELIEF DENIED

Robert J. Hooker, Pima County Public Defender
By Frank P. Leto

Tucson
Attorneys for Petitioner

P E L A N D E R, Chief Judge.

¶1 Petitioner Benjamin Reiter pled guilty to second-degree trafficking in stolen property, a class three felony, and admitted having one prior felony conviction. The plea agreement specified a sentencing range of 4.5 to ten years in prison and called for restitution.

The trial court imposed the presumptive term of 6.5 years and ordered Reiter to pay \$5,296 in restitution to the victims.

¶2 In a petition for post-conviction relief filed pursuant to Rule 32, Ariz. R. Crim. P., 17 A.R.S., Reiter alleged his sentence was excessive. He claimed the trial court had given insufficient weight to the following mitigating factors: his long history of drug addiction; the fact that he had committed only nonviolent property crimes and only as a result of his addiction; his acceptance of responsibility and remorse for his conduct; and his motivation to change, as demonstrated by having enrolled himself in a drug treatment program while on release, having successfully completed treatment, and having achieved more than eight months of sobriety—the longest such period in his adult life—during the pendency of this case. Reiter argued that rehabilitation for his drug addiction made more sense than punishing him for property crimes his addiction had driven him to commit, and he noted incarceration alone would not cure his addiction.

¶3 In short, Reiter argued, the fact of his longstanding addiction and the recent positive steps he had taken to deal with it were mitigating circumstances so substantial that the trial court abused its discretion by imposing the presumptive sentence instead of a mitigated 4.5-year term. The trial court denied relief, and this petition for review ensued. We will not disturb the trial court's ruling absent a clear abuse of its discretion. *State v. Watton*, 164 Ariz. 323, 325, 793 P.2d 80, 82 (1990).

¶4 In its minute entry denying relief, the trial court reviewed Reiter’s arguments, the record, and the applicable law before ratifying its decision to impose a presumptive, 6.5-year sentence. Noting that it had duly considered all pertinent information before sentencing Reiter initially and that there had also been aggravating circumstances, “including Petitioner’s significant criminal history and the victimization legitimately suffered by the victims [of] his crime,” the trial court found a reduction of Reiter’s sentence unwarranted and thus denied relief.

¶5 A sentencing court abuses its considerable discretion by imposing a sentence that is arbitrary, capricious, or outside statutory limits or when the court fails to adequately investigate the facts relevant to sentencing. *See State v. Fillmore*, 187 Ariz. 174, 184, 927 P.2d 1303, 1313 (1996); *State v. Patton*, 120 Ariz. 386, 388, 586 P.2d 635, 637 (1978). Those relevant facts include “not only the circumstances of the offense but also the character and past conduct of [the] defendant,” which aid the court in tailoring punishment to “[the] defendant’s general character and the nature of the crime committed.” *State v. Miller*, 120 Ariz. 224, 228, 585 P.2d 244, 248 (1978); *accord State v. Limpus*, 128 Ariz. 371, 378, 625 P.2d 960, 967 (App. 1981).

¶6 The record demonstrates the trial court had considered all aggravating and mitigating evidence presented and was fully informed of the pertinent facts before pronouncing sentence. We find no abuse of the court’s discretion, either in imposing the presumptive sentence initially or in ratifying its original decision by denying post-conviction

relief. *See State v. Olmstead*, 213 Ariz. 534, ¶¶ 5-7, 145 P.3d 631, 632-33 (App. 2006) (imposing presumptive sentence not abuse of discretion even when court finds some mitigating and no aggravating factors); *State v. Willcoxson*, 156 Ariz. 343, 347, 751 P.2d 1385, 1389 (App. 1987) (no abuse of discretion in imposing presumptive sentence after having carefully considered mitigating factors and individual circumstances of defendant).

¶7 Although we grant the petition for review, we deny relief.

JOHN PELANDER, Chief Judge

CONCURRING:

JOSEPH W. HOWARD, Presiding Judge

GARYE L. VÁSQUEZ, Judge